

ORDINANCE NO. 20110210-027

AN ORDINANCE APPROVING THE FIRST AMENDMENT TO THE AMENDED AND RESTATED LETTER OF CREDIT REIMBURSEMENT AGREEMENT RELATING TO THE "CITY OF AUSTIN, TEXAS, COMBINED UTILITY SYSTEMS COMMERCIAL PAPER NOTES, SERIES A".

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS

The City Council finds that:

1. Pursuant to Ordinance No. 930318-A, as amended by Ordinance No. 961121-A and Ordinance No. 980513-A (collectively, the Ordinance), Council authorized "CITY OF AUSTIN COMBINED UTILITY SYSTEMS COMMERCIAL PAPER NOTES, SERIES A" (the Notes) up to an aggregate principal amount of \$350,000,000, and the City of Austin (City) has authorized, issued, sold, and resold the Notes to finance the costs of additions, improvements and extensions to the City's Waterworks and Sewer System and the City's Electric Light and Power System (collectively referred to as the Systems) in accordance with the provisions of Texas Government Code, Chapter 1371.

2. To provide liquidity and security for the payment of the Notes, the City has entered into an Amended and Restated Letter of Credit Reimbursement Agreement (the Reimbursement Agreement), dated March 1, 2010, with JPMorgan Chase Bank, National Association, Bank of America, N.A. and State Street Bank and Trust Company (the Banks), pursuant to which the Banks issued the Letter of Credit securing the Notes.

3. The Banks and the City desire to enter into a First Amendment to the Amended and Restated Letter of Credit Reimbursement Agreement (the First Amendment) to reflect a change in the terms of the commitment fee, letter of credit fee, and the expiration date.

4. Council finds that the First Amendment should be approved and that the City should authorize the execution of the First Amendment.

PART 2. APPROVAL AND AUTHORIZATION FOR EXECUTION.

- (A) Council approves the First Amendment substantially in the form attached as Exhibit A and the modifications to the Reimbursement Agreement set forth in the First Amendment.
- (B) The City Manager, City Clerk, and City Attorney are authorized and directed to execute and deliver the First Amendment on behalf of the City.

PART 3. PUBLIC MEETING. The meeting at which this ordinance was adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given; all as required by Texas Government Code, Chapter 551.

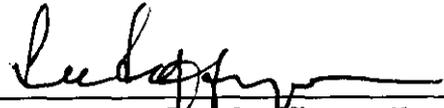
PART 4. EFFECTIVE DATE. This ordinance takes effect on February 21, 2011.

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PASSED AND APPROVED

February 10, 2011

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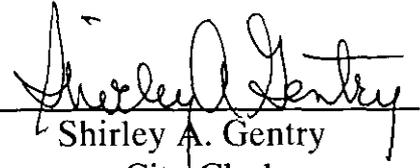
Lee Leffingwell
Mayor

APPROVED:



Karen Kennard
Acting City Attorney

ATTEST:



Shirley A. Gentry
City Clerk

EXHIBIT A
FIRST AMENDMENT TO
AMENDED AND RESTATED LETTER OF CREDIT
REIMBURSEMENT AGREEMENT

**FIRST AMENDMENT TO AMENDED AND RESTATED LETTER OF CREDIT
REIMBURSEMENT AGREEMENT**

This First Amendment to the Amended and Restated Letter of Credit Reimbursement Agreement (the "Amendment") executed and entered into as of January __, 2011 (the "Effective Date") by and among **THE CITY OF AUSTIN, TEXAS** (the "City"), **THE BANKS SIGNATORY** (the "Banks") and **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION** (as successor to **MORGAN GUARANTY TRUST COMPANY OF NEW YORK**), as Agent for the Banks (in such capacity, the "Agent").

WITNESSETH:

WHEREAS, the City and the Bank executed and delivered that certain Amended and Restated Letter of Credit Reimbursement Agreement dated as of March 1, 2010, (the "Reimbursement Agreement") pursuant to which the Banks issued their irrevocable transferable direct pay letter of credit (the "Letter of Credit") in connection with the \$350,000,000 City of Austin, Texas Combined Utility Systems Commercial Paper Notes, Series A (the "Notes"); and

WHEREAS, the City and the Banks now desire to amend the Reimbursement Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual agreements, representations and warranties herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties do hereby agree as follows:

Section 1. Amendment to definition of Applicable Commitment Fee Percentage.
The definition of "Applicable Commitment Fee Percentage" in Section 1.01 of the Reimbursement Agreement is hereby deleted and replaced with the following:

"Applicable Commitment Fee Percentage" means the percentage amount determined as a function of the unenhanced rating assigned by a Rating Agency to either of the City's Parity Electric Utility Obligations or Parity Water/Wastewater Obligations, whichever obligations have the lowest rating, in accordance with the schedules below. Prior to March 1, 2011, the Applicable Commitment Fee Percentage shall be as set forth in Schedule I below and on and after March 1, 2011, the Applicable Commitment Fee Percentage shall be as set forth in Schedule II below.

Schedule I

<u>Level</u>	<u>Rating</u> <u>Moody's/S&P/Fitch</u>	<u>Applicable</u> <u>Commitment Fee</u> <u>Percentage</u>
Level 1	A1 / A+/A+	1.15%
Level 2	A2 / A/A	1.35%
Level 3	A3 / A-/A-	1.55%
Level 4	Baa1 / BBB+/BBB+	1.75%
Level 5	Baa2 / BBB/BBB	1.95%

Exhibit A

Level 6	Baa3 / BBB-/BBB-	2.15%
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Schedule II

<u>Level</u>	<u>Rating</u> <u>Moody's/S&P/Fitch</u>	<u>Applicable</u> <u>Commitment Fee</u> <u>Percentage</u>
Level 1	A1 / A+/A+	.85%
Level 2	A2 / A/A	1.05%
Level 3	A3 / A-/A-	1.25%
Level 4	Baa1 / BBB+/BBB+	1.45%
Level 5	Baa2 / BBB/BBB	1.65%
Level 6	Baa3 / BBB-/BBB-	1.85%

In the event of split ratings among Moody's, S&P and Fitch the Applicable Commitment Fee Percentage shall be determined from the lowest of the three ratings. Any change in the Applicable Commitment Fee Percentage resulting from a change in a rating shall be and become effective as of and on the date of the announcement of the change in such rating. References to ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating Agency, each of the ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The City acknowledges, and the Banks agree, that as of the Effective Date the Applicable Commitment Fee Percentage is that specified above for Schedule I, Level 1. Upon the occurrence and during the continuance of an Event of Default or in the event that any rating is suspended, withdrawn or is otherwise unavailable, in each case for credit related reasons, the Applicable Commitment Fee Percentage shall be increased from the rate then in effect by an additional one and one-half percent (1.50%). The Commitment Fee shall be payable quarterly in arrears, together with interest on the Commitment Fees from the date payment is due until payment in full at the Default Rate.

Section 2. Amendment to definition of Applicable Letter of Credit Fee Percentage. The definition of "*Applicable Letter of Credit Fee Percentage*" in Section 1.01 of the Reimbursement Agreement is hereby deleted and replaced with the following:

"*Applicable Letter of Credit Fee Percentage*" means the percentage amount determined as a function of the unenhanced rating assigned by a Rating Agency to either of the City's Parity Electric Utility Obligations or Parity Water/Wastewater Obligations, whichever obligations have the lowest rating, in accordance with the schedules below. Prior to March 1, 2011, the Applicable Letter of Credit Fee Percentage shall be as set forth in Schedule I below and on and after March 1, 2011, the Letter of Credit Fee Percentage shall be as set forth in Schedule II below.

Schedule I

<u>Level</u>	<u>Rating</u> <u>Moody's/S&P/Fitch</u>	<u>Applicable</u> <u>Letter of Credit Fee Percentage</u>
Level 1	A1 / A+/A+	1.25%
Level 2	A2 / A/A	1.45%
Level 3	A3 / A-/A-	1.65%
Level 4	Baa1 / BBB+/BBB+	1.85%
Level 5	Baa2 / BBB/BBB	2.05%
Level 6	Baa3 / BBB-/BBB-	2.25%

Schedule II

<u>Level</u>	<u>Rating</u> <u>Moody's/S&P/Fitch</u>	<u>Applicable</u> <u>Letter of Credit Fee</u> <u>Percentage</u>
Level 1	A1 / A+/A+	.90%
Level 2	A2 / A/A	1.10%
Level 3	A3 / A-/A-	1.30%
Level 4	Baa1 / BBB+/BBB+	1.50%
Level 5	Baa2 / BBB/BBB	1.70%
Level 6	Baa3 / BBB-/BBB-	1.90%

In the event of split ratings among Moody's, S&P and Fitch the Applicable Letter of Credit Fee shall be determined from the lowest of the three ratings. Any change in the Applicable Letter of Credit Fee Percentage resulting from a change in a rating shall be and become effective as of and on the date of the announcement of the change in such rating. References to ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating Agency, each of the ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The City acknowledges, and the Banks agree, that as of the Effective Date the Applicable Letter of Credit Fee Percentage is that specified above for Schedule I, Level 1. Upon the occurrence and during the continuance of an Event of Default or in the event that any Rating is suspended, withdrawn or is otherwise unavailable, in each case for credit related reasons, the Applicable Letter of Credit Fee Percentage shall be increased from the rate then in effect by an additional one and one-half percent (1.50%). The Letter of Credit Fees shall be payable quarterly in arrears, together with interest on the Letter of Credit Fees from the date payment is due until payment in full at the Default Rate.

Section 3. Amendment to definition of Commitment Expiration Date. The definition of "*Commitment Expiration Date*" in Section 1.01 of the Reimbursement Agreement is hereby deleted and replaced with the following:

“Commitment Expiration Date” means October 1, 2014, or such later date established as the Commitment Expiration Date pursuant to Section 9.02(b) or such earlier date on which the Banks may terminate their Commitments as provided herein or the date on which the City may terminate the Banks’ Commitments as provided herein. In the event the Commitment Expiration Date is scheduled to occur on a day which is not a Business Day, the Commitment Expiration Date shall occur on the next preceding Business Day.

Section 4. Conditions Precedent. As condition to the effectiveness of this Amendment (i) City Council shall have approved the amendment and the City shall have received any additional necessary approvals or authorizations, (ii) the City shall have paid all legal fees of legal counsel to the Banks related to the preparation of this Amendment, and (iii) the Banks shall have received such additional documents, instruments and information as the Banks or their legal counsel may reasonably request.

Section 5. Representations True; No Default. The City represents and warrants that the representations and warranties contained herein and in the Reimbursement Agreement are true and correct in all material respects on and as of the date hereof as though made on and as of such date. The City hereby certifies that no event has occurred and is continuing which constitutes an Event of Default or which upon the giving of notice or the lapse of time or both would constitute an Event of Default.

Section 6. Ratification. Except as expressly amended hereby, the Reimbursement Agreement shall remain in full force and effect. The Reimbursement Agreement, as hereby amended, and all rights and powers created thereby or thereunder are in all respects ratified and confirmed and remain in full force and effect.

Section 7. Definitions and References. Any term used herein which is defined in the Reimbursement Agreement shall have the meaning therein ascribed to it. The term “Reimbursement Agreement” as used in the Reimbursement Agreement or any other instrument, document or writing furnished to the Bank by the City and referring to the Reimbursement Agreement shall mean the Reimbursement Agreement as hereby amended.

Section 8. Governing Law. **THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS; PROVIDED, THAT THE OBLIGATIONS OF THE BANKS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

Section 9. Miscellaneous. This Amendment (a) may be executed in several counterparts, and by the parties hereto on separate counterparts, and each counterpart, when so executed and delivered, shall constitute an original agreement, and all such separate counterparts shall constitute but one and the same agreement, and (b) together with the Reimbursement Agreement, embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, consents and understandings relating to such subject matter. The headings herein shall be accorded no significance in interpreting this Amendment.

THE REIMBURSEMENT AGREEMENT, AS AMENDED BY THIS AMENDMENT, REPRESENTS THE FINAL AGREEMENT OF THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

By: _____
MARC OTT
City Manager

ATTEST:

SHIRLEY A. GENTRY
City Clerk

APPROVED:

KAREN KENNARD
Acting City Attorney

[Signatures continued on following page]

AS AGENT AND BANK:

**JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION**

By: _____
Name: David M. Bayer
Title: Executive Director

AS BANK:

BANK OF AMERICA, N.A.

By: _____
Name: Michael A. Feist
Title: Senior Vice President

AS BANK:

**STATE STREET BANK AND TRUST
COMPANY**

By: _____
Name: Thomas A. Henderson
Title: Vice President